

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

07 Civ. 3648 (KNF)(HBP)

**MEMORANDUM OF LAW IN FURTHER SUPPORT OF DEFENDANTS
ROC-A-FELLA FILMS INC. AND DAMON DASH’S JOINT MOTION FOR
SUMMARY JUDGMENT**

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The Dash Defendants have reviewed Defendant Lions Gate Films, Inc.’s (“Lions Gate”) Reply Memorandum of Law in Support of Summary Judgment (the “Lions Gate Reply Memorandum of Law”), and in the interest of preserving judicial time and resources, adopt and join Lion Gate’s arguments in their entirety. We address herein only (I) Plaintiff’s third claim for common law misappropriation, which is alleged solely against defendant Dash; and (II) Plaintiff’s mischaracterization of Mr. Dash’s deposition testimony, which in any event is irrelevant to the issues raised by the Dash Defendants’ Motion for Summary Judgment.

**I. Plaintiff Failed to Address Dash's
Motion Regarding Misappropriation**

Plaintiff completely ignored Dash's arguments relating to the misappropriation claim against Dash. Dash argued in his moving memorandum that, as a matter of law, the State Law misappropriation claim is preempted by the Copyright Act. Accordingly, Dash should be awarded summary judgment on the common law misappropriation claim alleged in the Complaint as the third claim for relief. *Bellegar de Dussuau v. Blockbuster, Inc.*, 2006 WL 465374, at *7 (S.D.N.Y. 2006), citing *Douglas v. Victor Capital Group*, 21 F. Supp. 2d 379, 393 (S.D.N.Y. 1998) (deeming plaintiff's claims to be abandoned after plaintiff failed to oppose a summary judgment motion specifically addressing those claims).

**II. Plaintiff Mischaracterizes Dash's Deposition Testimony; In
Any Event, it is Irrelevant to this Motion for Summary Judgment**

Plaintiff devoted substantial space in his brief to a recitation of facts that Dash allegedly "did not deny" during the course of his deposition. *See, e.g.*, Plaintiff's opposition brief at pp. 4 and 7. In context, Dash was asked questions regarding events that occurred more than ten years ago. In response to several questions, Dash responded that he could not recall the events. Plaintiff's follow up question was in the form of, "So you do not deny that the event occurred," to which Dash responded that he did not deny that something he did not remember at all occurred. Dash's declining to deny questions posed to him at his deposition by Plaintiff's counsel regarding events that occurred approximately ten years ago hardly constitutes an admission of an actual occurrence.

Regardless of Plaintiff's attempt to force the square peg into the round hole, as discussed in the Lions Gate Reply Memorandum of Law, these purported issues of fact do not assist Plaintiff because they do not concern the content of the works themselves – which is the focus of the Motion for Summary Judgment in a copyright context.

CONCLUSION

For the foregoing reasons, Defendants Roc-A-Fella Films, Inc. and Damon Dash respectfully request that the Court grant its Motion for Summary Judgment dismissing the Complaint in its entirety, with prejudice, together with such other and further relief the Court deems just and proper.

Dated: New York, New York
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